

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and

HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 1920 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
05/07/2004 in WP NO : 4212 OF 2004 on the file of the High Court.)

Between:

Syed Samiuddin Hashmi @ Sama, S/o Mohuddin Hasmi,
rep. by his GPA Holder Syed Shajiuddin Hashmi s/o Mohiuddin Hasmi, aged
35 years, Occ: Business,
R/o 19-5-32/17/C1, Asad Baba Nagar, Hyderabad.

..... APPELLANT

AND

- 1 The Commissioner of Police, Hyderabad.
- 2 The Inspector of Police, Women Police Station, South
Zone, Hyderabad.
- 3 The Regional Passport Officer, Secunderabad.
- 4 Mahmooda Fatima, D/o Mohd. Muqtar Ahmed,
R/o 19-4-321/4/B, Kishan Bagh, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant : MR.C.RAGHU

Counsel for the Respondent Nos. 1 and 2 : GP FOR HOME

**Counsel for the respondent No.3: Mr. A. Rajasekhar Reddy, Standing
Counsel for Central Government.**

Counsel for the respondent No.4: Mr. T.Pradyumnakumar Reddy.

The Court made the following :

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

1. Appellant is 3rd respondent in the writ petition and is aggrieved by the order passed on 05.07.2004 by learned single Judge while disposing of W.P.No.4212 of 2004 filed by 4th respondent herein.

2. The writ petitioner alleged that she filed a private complaint which was referred by XXII Metropolitan Magistrate, Hyderabad, for investigation and which was registered as Crime No.25 of 2001, Women Police Station, South Zone, Hyderabad. The complaint was for offences under Sections 498-A, 406

I.P.C., and 4 and 6 of Dowry Prohibition Act. After investigation, charge-sheet was filed against accused 2 to 7, who are the family members of the appellant herein. The said charge-sheet was registered as C.C.No.392 of 2001 on the file of XXII Metropolitan Magistrate, Hyderabad. Writ petitioner alleged that the investigating agency know about the whereabouts of the appellant, who was accused No.1 in the complaint. But no steps have been taken by them to bring him before the Court of law. Affidavit in reply was filed on behalf of respondents 1 and 2 stating that after investigation was completed, charge-sheet was filed. But appellant herein was not available. Therefore, no action could be taken. It was pointed out that appellant was staying in Saudi Arabia. Implead application has been filed and Regional Passport Officer, Secunderabad, was impleaded as party. Learned single Judge, after hearing the parties and considering the material on record and placing reliance upon the decision of the learned single Judge of this Court reported in Kodali Nageswara Rao Vs. Koneru Venu & another (1998 (5) ALD 563), proceeded to dispose of the writ petition with direction to the Regional Passport Officer, Secunderabad, to take appropriate steps either for impounding or cancellation of the passport of the appellant stated to be residing in Saudi Arabia and see that he should be deported from that Country and produced before the Criminal Court, where the matter is pending. Said action was directed to be initiated and completed within a period of three months. Aggrieved by the said order, this appeal has been preferred.

3 . Learned single Judge in Kodali Nageswara Rao's case interpreted provisions of Section 10(3)(e) of the Passports Act, 1967, and Section 156(3) of the Code of Criminal Procedure and proceeded to observe that it should be presumed that the proceeding in the Criminal Court commenced on registration of the case and when once it is held that criminal proceedings are initiated, Passport Officer is bound to act either to impound or cancel the passport. Therefore, he issued a direction to the Passport Officer to pass orders on the letter addressed by the Additional Director General of Police within one week from the date of receipt of a copy of the order.

4. Section 10 of the Passports Act authorises the passport authority to vary or cancel the endorsements on a passport or travel document or cancel the conditions subject to which passport or travel document had been issued subject to conditions as prescribed in the said Section. Sub-section (3) of Section 10 empowers the passport authority to impound or cause to be impounded or revoke a passport or a travel document in either of the eventualities enumerated in clauses (a) to (h). Clause (e) envisages exercise of the power by the passport authority if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a Criminal Court in India. Similarly clause (h) also enables the passport authority to pass appropriate order on being satisfied that the warrant or summons has been issued by a Court under law for the time being in force. Necessarily power, which is vested under the provisions of the Act, has to be exercised by the passport authority within the parameters laid down by the law. Discretion to be exercised by him cannot be controlled by any other authority, muchless the Courts. Regional Passport Officer was impleaded as 4th respondent in the writ petition, and in case Court was satisfied that direction deserves to be issued, it should have been left to the discretion of the said authority to pass appropriate orders in accordance with law. The direction, which has been issued in the instant case, on the face of it, binds down the passport authority to pass an order either impounding or canceling the passport. There is no scope left in the direction issued for exercise of discretion by the passport authority. Passport authority cannot, in a mechanical manner, pass an order. There is a discretion left to be exercised by him and powers can be exercised only on the conditions laid down under the provisions of the Act, which could not have been controlled of by the nature of directions issued in the instant case. Accordingly, we allow the appeal, modify the impugned order and direct that the Regional Passport Officer, Secunderabad, will treat the writ petition itself as request made by Mahmooda Fatima for cancellation or impounding of the passport of the appellant herein and will deal with the said request strictly in accordance with law and pass appropriate orders thereon within a period of four weeks from today. No costs.

DEVINDER GUPTA. C.J.,

M. NARAYANA REDDY. J.,

Dated: 09.12.2004.

VRK.

To

- 1 The Commissioner of Police, Hyderabad.
- 2 The Inspector of Police, Women Police Station, South Zone, Hyderabad.
- 3 The Regional Passport Officer, Secunderabad.
4. Two CCs to G.P. for Home, High Court Buildings, Hyderabad (OUT).
5. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE M. NARAYANA REDDY.

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W.A.NO. 1920 OF 2004.

**(Judgment of the Bench delivered by
Hon'ble The Chief Justice)**

Dt: 09.12.2004.